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PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Applicant: FERRITTO CRESPO Rafael	Group Art Unit: 1621
Serial No.: 10/596256	Examiner: Katakam, Sudhakar
Application Date: December 8, 2004	Conf No.: 4487
US Nat'l Entry Date: June 7, 2006	
For: SELECTIVE PEROXISOME PROLIFERATOR ACTIVATED RECEPTOR MODULATORS	
Docket No.: X-16566	

RESTRICTION RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Introductory Comments

Dear Sirs:

This paper is filed in response to the restriction requirement dated 24 May 2007. Claims 1-7 and Claims 17-23 are pending in the present application and are subject to the following restriction pursuant to 35 U.S.C. 121 and 372:

Group I, claims 1-7, drawn to a compound of formula I and its composition.

Group II, claims 17-23, drawn to a method of treatment.

Applicants hereby elect, with traverse, the invention of Group I, directed to the compounds and composition. Remarks and arguments regarding the traversal begin on page 2. Applicants hereby reserve the right to file one or more divisional applications to claim non-elected subject matter.

Applicants do not believe that any fees are incurred; however, any fees associated with this amendment may be charged to Eli Lilly Deposit Account number: 05-0840.

Remarks

Applicants elect Group I, with traverse. The Examiner requested Applicants to elect a single species solely for examination purposes. Applicants hereby elect the compound of Claim 4. To provide further clarity, the elected species is 3-(4-{[2-(4-ethoxy-phenyl)-ethylcarbamoyl]-methoxy}-phenyl)-2-methoxypropionic acid.

Applicants respectfully request for a reconsideration that method of treatment claims (Group II) be included for the examination with Group I because the Examiner could readily access information regarding the use of compound while searching for the compounds. Applicants therefore believe that there is a minimal burden on the Examiner to examine the elected compounds along with method claims. It is further noted that under 37 CFR 1.475(b), product and use claims can be considered to have unity of invention, and elected Group I is so linked as to form a single general inventive concept because they are directed to PPAR agonists.

If the Examiner decides to decline Applicants request to include Group II, Applicants respectfully request that method of use claims (Group II) be rejoined when a product claim (Group I) is found to be allowable. According to M.P.E.P. §821.04 and *In re Ochiai*, 71 F.3d 1565, 37 USPQ 1127 (Fed. Cir. 1995), rejoinder of product claims with process claims commensurate in scope with the allowed product claims is permitted following a finding that the product claims are allowable.

Applicants request reconsideration regarding the grouping of the invention to rejoinder the specific methods of use, each associated with PPAR modulation, commensurate in scope with allowable compounds of Group I. Alternatively, if the restriction to Groups I and II is maintained, Applicants request consideration for rejoinder of the specific methods of use, each associated with PPAR modulation, for the compounds of Group I commensurate with the allowable compound scope. Applicants hereby reserve the right to claim any non-elected subject matter in one or more divisional applications.

Applicants courteously request favorable consideration of this application and entry of the enclosed amendments.

The Examiner is respectfully requested to contact the undersigned attorney on any matter related to this application.

Respectfully submitted,

/MaCharri R. Vorndran-Jones/

MaCharri Vorndran-Jones
Attorney for Applicants
Registration No. 36,711
Phone: 317-276-1665

Eli Lilly and Company
Patent Division
P.O. Box 6288
Indianapolis, Indiana 46206-6288

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